UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSOCIATED PRESS, **Plaintiff,** **- against -** **UNITED STATES DEPARTMENT OF DEFENSE,** **Defendant.**	**ECF Case** **No. 05 Civ. 5468 (JSR)** **DECLARATION OF DAVID A. SCHULZ**

I, DAVID A. SCHULZ, pursuant to 28 U.S.C. § 1746, do hereby declare:

1. I am a member of Levine Sullivan Koch & Schulz, L.L.P., counsel for plaintiff Associated Press ("AP"). I submit this declaration in support of AP's opposition to defendant's motion for partial summary judgment with respect to information withheld from certain pre-ARB transfer/release documents selected by the Department of Defense ("DOD") as samples of a larger universe of documents sought by AP under the Freedom of Information Act ("FOIA").

2. At issue on this motion is a request submitted to DOD by AP seeking information about detainees who were transferred or released by DOD from a prison at Guantanamo Bay Cuba. AP's FOIA request was dated January 18, 2005. A true and correct copy of this request is submitted herewith as Exhibit A.

3. After AP filed this lawsuit in June 2005, DOD produced certain heavily redacted documents, but they concerned only those detainees who were transferred or released from Guantanamo after DOD convened its Administrative Review Tribunals in late 2004. When AP objected to this limitation on the information provided, DOD agreed to conduct a broader search, and to produce samples of the types of responsive documents in its possession and of the information that it intended to withhold from them. AP agreed to this approach in order to

Dockets.Justia.com

expedite judicial review of the broad scope of information DOD indicated that it intended to withhold from the transfer/release documents.

4. On this motion AP seeks to compel the public disclosure of the facts and circumstances surrounding the release or transfer of detainees from Guantanamo to the full extent required under the FOIA. However, AP does not challenge at this time DOD's decision to withhold the following information:

a) a handwritten note by the Deputy Secretary of Defense concerning "potential future discussions" with a foreign government (Stimson Decl. ¶ 11a);

b) the identification of specific databases searched by CITF (Smith Decl. ¶ 15);

c) confidential communications with DOD attorneys that would be protected in litigation under the attorney-client privilege or work-product privilege (Stimson Decl. ¶ 10b);

d) the full ISN numbers of the released or transferred detainees (Harris Decl. ¶ 31); and

e) the names, initials or phone numbers of DOD personnel (Stimson Decl. ¶ 8b).

5. I am also submitting this declaration to place before the Court a number of documents that are relevant to the partial motion for summary judgment and discussed in AP's memorandum of law submitted herewith.

6. Attached as Exhibit B is a true and correct copy of DOD News Release No. 814-06, entitled "Detainee Transfer Announced." It is available on DOD's website at http://www.defenselink.mil/Releases/Release.aspx?ReleaseID=9869.

7. Attached hereto as Exhibit C is a true and correct copy of the first page of a document titled "List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006," released by DOD on May 15, 2006. It is

available on DOD's website at http://www.dod.mil/pubs/foi/detainees/detaineesFOIArelease15May2006.pdf.

8. Attached hereto as Exhibit D is a true and correct copy of an "Administrative Review Board Summary," available on DOD's website at http://www.dod.mil/news/Jan2006/d20060130arb.pdf, and a true and correct copy of an "Administrative Review Board Summary – ARB-2," available on DOD's website at http://www.defenselink.mil/news/arb2.pdf.

9. Attached as Exhibit E is a true and correct copy of DOD News Release No. 651-04, entitled "Combatant Status Review Tribunal Order Issued." It is available on DOD's website at http://www.defenselink.mil/releases/2004/nr20040707-0992.html.

10. Attached hereto as Exhibit F is a true and correct copy of a "Combatant Status Review Tribunal Summary," available on DOD's website at http://www.defenselink.mil/news/Mar2005/d20050329csrt.pdf.

11. Attached hereto as Exhibit G is a true and correct copy of a "Sample Assessment and Recommendation Letter," attached as Enclosure 12 to the "Revised Implementation of Administrative Review Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba," released by DOD on July 14, 2006. It is available at http://www.defenselink.mil/news/Aug2006/d20060809ARBProceduresMemo.pdf, at pp. 37-38.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed: New York, New York
September 12, 2006

David A. Schulz

Exhibit A

AP Associated Press

Paisley L. Dodds
Caribbean News Editor

Jan. 18, 2005

Rear Admiral James McGarrah
2000 Navy Pentagon
Room 4D 445
Washington, D.C. 20301-1155

Information Officer
Office of Freedom of Information Security Review
Directorate for Executive Services and Communications
FOIA/Privacy Branch
1155 Defense Pentagon
Room 2C757
Washington, D.C. 20301-1155

Re: Request for information under the Federal Freedom of Information Act

Dear Sir,

This is a request for The Associated Press for information pursuant to the Freedom of Information Act (5 U.S.C. 552). AP is seeking the following:

1. Transcripts of all testimony given at the Administrative Review Board hearings at the U.S. Naval Base in Guantanamo Bay, Cuba. The hearings began in December 2004;
2. Copies of all written statements provided by any detainee.
3. Copies of all documents that have been provided by any detainee at the U.S. Naval Base in Guantanamo Bay, Cuba, to their assigned personal representatives, including reasons they furnish should they decide not to attend their Administrative Review Board hearings.

Metro Office Park, 8 No. 1 Street, Suite 108 Guaynabo, Puerto Rico 00968-1721 Tel. (787) 793-5833 • Fax (787) 783-0427

Associated Press

Paisley L. Dodds
Caribbean News Editor

Copies of any affidavits submitted by witnesses to the Administrative Review Boards, including that of medical personnel.

4. Copies of the allegations against the detainees being held in Guantanamo Bay, Cuba.
5. Details and explanations of the decisions made to release or transfer detainees, including the reason why the decision was made.

AP is seeking these materials in connection with its reporting on a continuing news story of great interest to the public, both in the United States and abroad. We therefore ask that you expedite your response to these requests as required by 5 U.S.C. 552 (a)(6)(E). Because of this information is of timely news value, if you have any questions about this request, please contact me by telephone fax or e-mail, rather than relying on regular mail. You may reach me by telephone at (787) 793-5833, by fax (787) 783-4425; or by e-mail at pdodds@ap.org.

When you complete your work on this request, I would also appreciate it if you would contact me by phone so I can arrange for a courier to pick up the documents.

Thanks you for your assistance.

Sincerely,

Paisley Dodds
Caribbean news editor

Exhibit B

U.S. Department of Defense
Office of the Assistant Secretary of Defense (Public Affairs)

News Release

On the Web:
http://www.defenselink.mil/Releases/Release.aspx?ReleaseID=9869
Media contact: +1 (703) 697-5131/697-5132

Public contact:
http://www.dod.mil/faq/comment.html
or +1 (703) 428-0711 +1

IMMEDIATE RELEASE

No. 814-06
August 26, 2006

Detainee Transfer Announced

The Department of Defense announced today that it transferred five detainees from Guantanamo Bay, Cuba, to Afghanistan. These detainees were all recommended for transfer due to multiple review processes conducted at Guantanamo Bay.

With today's transfer, approximately 120 detainees remain at Guantanamo who the U.S. government has determined eligible for transfer or release through a comprehensive series of review processes. Departure of these remaining detainees approved for transfer or release is subject to ongoing discussions between the United States and other nations. The United States does not desire to hold detainees for any longer than necessary. The department expects that there will continue to be other transfers and releases of detainees.

There are ongoing processes to review the status of detainees held at Guantanamo. A determination about the continued detention or transfer of a detainee is based on the best information and evidence available at the time, both classified and unclassified.

With this transfer, approximately 315 detainees have departed Guantanamo for other countries, including Albania, Afghanistan, Australia, Bahrain, Belgium, Denmark, Egypt, France, Germany, Iran, Iraq, Jordan, Kuwait, Maldives, Morocco, Pakistan, Russia, Saudi Arabia, Spain, Sweden, Sudan, Tajikistan, Turkey, Uganda, United Kingdom, and Yemen.

Approximately 445 detainees remain at Guantanamo.

Exhibit C

List of Individuals Detained by the Department of Defense at Guantanamo Bay, Cuba from January 2002 through May 15, 2006

	Name	ISN	Citizenship	Place of Birth	Date of Birth **
1	((SHARIPOV)), RUKNIDDIN FAYZIDDINOVICH	76	Tajikistan	Lenenabad, Tajikistan	3/15/1973
2	((VAKHIDOV)) SOBIT (ABDUMUKIT) VALIKHONOVICH	90	Tajikistan	Itsfaratz, Tajikistan	11/13/1969
3	ABAHANOV, YAKUB	526	Kazakhstan	Semeya, Kazakhstan	UNKNOWN
4	ABAS, MOHAMMAD	542	Pakistan	Village 426, PK	UNKNOWN
5	ABASIN, SAID	671	Afghanistan	Khan o Khel, AF	1/1/1982
6	ABASSI, FEROZ ALI	24	United Kingdom	Entebbe, Uganda	10/29/1979
7	ABBAS, YUSEF	275	China	Aksu, CH	1/1/1980
8	ABD AL MUJAHID, MAHMOUD ABD AL AZIZ	31	Yemen	Ta'iz, YM	8/1/1977
9	ABD AL RAHMAN ABD, ALLAL AB ALJALLIL	156	Yemen	Aluday, YM	12/27/1975
10	ABD AL SATTAR, MUIEEN A DEEN JAMAL A DEEN ABD AL FUSAL	309	United Arab Emirates	Dubai, UAE	6/5/1975
11	ABD AL WAHAB, ABD AL MALIK	37	Yemen	Ibb, YM	1/1/1979
12	'ABD AL-RAZAQ 'ABDALLAH HAMID IBRAHIM AL-SHARIKH	67	Saudi Arabia	Shaqara, SA	1/18/1984
13	ABDALLAH, MUHAMED HUSSEIN	704	Somalia	Boor'o, SO	1/1/1983
14	ABDALLAH, SAYF BIN	46	Tunisia	Menzil, Tunisia	6/24/1973
15	ABDEL AZIZ, ABDULLAH MUHAMMED	206	Saudi Arabia	Al Medina Menawa, SA	9/8/1967
16	ABDELRAHMAN, ABDELRAZAK ALI	685	Libya	Al Jilat, LY	7/17/1970
17	ABDENOUR, SAMEUR	659	Algeria	Algiers, Algeria	3/28/1973
18	ABDERRAHMANE, SLIMANE HADJ	323	Denmark	Roskilde, Denmark	8/5/1973
19	ABDUL HAMID, HASSAN KHALIL MOHAMOUD	711	Jordan	Amman, JO	11/12/1961
20	ABDUL RAHMAN, ABDUL GHAPPAR	281	China	Kucha, CH	3/15/1973
21	ABDUL SAID, HASSAN	435	Iraq	Basra, Iraq	4/7/1976
22	ABDUL WAHAB AL ASMR, KHALID MAHOMOUD	589	Jordan	Irbid, JO	12/16/1963
23	ABDULAHAT, EMAM	295	China	Konashahar, CH	6/1/1977
24	ABDULAYEV, OMAR HAMZAYAVICH	257	Tajikistan	Dushanbe, Tajikistan	10/11/1978
25	ABDULGHUPUR, HAJIAKBAR	282	China	Ghulja, CH	1/1/1974
26	ABDULHEHIM, ADEL	293	China	Ghulja, CH	10/10/1974
27	ABDULQADIRAKHUN, ABDULLAH	285	China	Xinjian, CH	6/18/1979
28	ABDUREHIM, DAWUT	289	China	Ghulja, CH	11/1/1974
29	ABU AL QUSIN, ABDUL RAUF OMAR MOHAMMED	709	Libya	Tripoli, LY	1/1/1965
30	ABU BAKR, OMAR KHALIFA MOHAMMED	695	Libya	Al Bayda, LY	1/1/1972
31	ABU GHANIM, MOHAMMED RAJAB SADIQ	44	Yemen	Sanaa, YM	1/1/1975
32	ABU RAHMAN, ABDUL RABBANI ABD AL RAHIM	1460	Pakistan	UNKNOWN	1/1/1969

Exhibit D

ADMINISTRATIVE REVIEW BOARD SUMMARY

A summary of the board statistics for first round of ARBs is provided. All hearings for ARB-1 were conducted from Dec 14, 2004 to Dec 23, 2005.

Date of Report	Number of ARBs Held	DCO Decisions	Outcomes		
			Release	Transfer	Continue to Detain
July 8, 2005	162 (to date)	70	4	25	41
July 25, 2005	16	6	0	1	5
August 1, 2005	11	12	0	10	2
August 8, 2005	13	10	1	0	9
August 22, 2005	25	19	0	3	16
August 29, 2005	13	8	0	2	6
September 6, 2005	13	0	0	0	0
September 12, 2005	15	18	0	2	16
September 19, 2005	10	4	1	2	1
September 26, 2005	9	8	0	2	6
October 3, 2005	12	0	0	0	0
October 10, 2005	10	19	2	8	9

INTERNET AVAILABILITY: This document is available on DefenseLINK, a World Wide Web Server on the Internet, at: http://www.defenselink.mil

Date of Report	Number of ARBs Held	DCO Decisions	Release	Transfer	Continue to Detain
October 17, 2005	10	4	0	1	3
October 24, 2005	12	19	2	8	9
October 31, 2005	15	1	0	1	0
November 7, 2005	12	17	0	7	10
November 14, 2005	13	1	0	1	0
November 28, 2005	25	31	0	3	28
December 5, 2005	18	2	1	1	0
December 12, 2005	16	6	0	6	0
December 19, 2005	18	0	0	0	0
December 27, 2005	14	20	0	15	5
January 3, 2006	0	35	2	7	26
January 9, 2006	0	41	0	0	41
January 17, 2006	0	37	0	6	31
January 23, 2006	0	35	1	2	32
January 30, 2006	0	17	0	4	13
February 2, 2006	0	23	0	2	21
Aggregate	**464**	**463**	**14 (3%)**	**119 (26%)**	**330 (71%)**

Note: One hearing held on detainee was subsequently determined to be ineligible for ARB (approved for transfer under prior process). Therefore, package was not forwarded to DCO for decision)

ADMINISTRATIVE REVIEW BOARD SUMMARY

ARB-2

A summary of the board statistics to date is provided. Detainees that are ARB-2 eligible: 330

Date of Report	Number of ARBs Held	DCO Decisions	Outcomes		
			Release	Transfer	Continue to Detain
April 25, 2006	88 (To Date)	2	0	0	2
May 1, 2006	9	0	0	0	0
May 8, 2006	8	2	0	1	1
May 15, 2006	8	0	0	0	1
May 22, 2006	7	2	0	0	2
May 30, 2006	9	0	0	0	0
June 5, 2006	8	3	0	1	2
June 12, 2006	9	4	0	2	2
June 19, 2006	7	7	0	5	2
June 26, 2006	8	2	0	0	2
July 5, 2006	8	4	0	2	2
July 10	6	3	0	2	1

INTERNET AVAILABILITY: This document is available on DefenseLINK, a World Wide Web Server on the Internet, at: http://www.defenselink.mil

July 17	12	0	0	0	0
July 24	7	0	0	0	0
July 31	6	9	0	4	2
Aug 7	6	10	0	1	9
Aug 14	**3**	**12**	**0**	**9**	**3**
Cumulative Since Jan 2006	**209**	**58**	**0**	**27**	**31**

Exhibit E

United States Department of Defense

News Release

On the web: http://www.defenselink.mil/Utility/PrintItem.aspx?print=http://www.defenselink.mil/releases/2004/nr20040707-0992.html
Media contact: +1 (703) 697-5131
Public contact: http://www.dod.mil/faq/comment.html or +1 (703) 428-0711

IMMEDIATE RELEASE

No. 651-04
July 7, 2004

COMBATANT STATUS REVIEW TRIBUNAL ORDER ISSUED

The Department of Defense announced today the formation of the Combatant Status Review Tribunal for detainees held at Guantanamo Bay, Cuba. This tribunal will serve as a forum for detainees to contest their status as enemy combatants.

Detainees held at Guantanamo Bay will be notified within 10 days of their opportunity to contest their enemy combatant status under this process. The tribunal process will start as soon as possible. Detainees will also be notified of their right to seek a writ of habeas corpus in the courts of the United States. Habeas corpus is a writ ordering a person in custody to be brought before a court.

An individual tribunal will be comprised of three neutral officers, none of whom were involved with the detainee. One of the tribunal members will be a judge advocate and the senior ranking officer will serve as the president of the tribunal.

Each detainee will be assigned a military officer as a personal representative. That officer will assist the detainee in preparing for a tribunal hearing. Detainees will have the right to testify before the tribunal, call witnesses and introduce any other evidence. Following the hearing of testimony and other evidence, the tribunal will determine in a closed-door session whether the detainee is properly held as an enemy combatant. Any detainee who is determined not to be an enemy combatant will be transferred to their country of citizenship or other disposition consistent with domestic and international obligations and U.S. foreign policy.

This tribunal does not replace the administrative review procedure announced earlier this year.

The order establishing the tribunals and a DoD Fact Sheet are available at:
http://www.defenselink.mil/news/Jul2004/d20040707review.pdf
http://www.defenselink.mil/news/Jul2004/d20040707factsheet.pdf

Exhibit F

COMBATANT STATUS REVIEW TRIBUNAL SUMMARY

Convening Authority Rear Adm. James M. McGarrah reviewed the records of 19 detainee tribunals over the period (21 - 29 March 2005). McGarrah approved the decisions of the tribunals, determining that 14 of the detainees are classified as enemy combatants and 5 detainess are no longer classified as enemy combatants.

A summary of the tribunal statistics to date is provided.

Date of Report	Number of Tribunals Held	Convening Authority Final Action	Outcome	
			Enemy Combatant	Non-enemy combatant
Aug. 13, 2004	21	4	4	0
Aug. 20, 2004	9	10	10	0
Aug. 30, 2004	12	5	5	0
Sep. 3, 2004	7	10	10	0
Sep. 8, 2004	6	1	0	1
Sep. 13, 2004	6	8	8	0
Sep. 20, 2004	8	5	5	0
Sep. 27, 2004	25	10	10	0
Oct. 4, 2004	29	16	16	0
Oct. 11, 2004	32	20	20	0
Oct. 18, 2004	28	7	7	0

INTERNET AVAILABILITY: This document is available on DefenseLINK, a World Wide Web Server on the Internet, at: http://www.defenselink.mil

Oct. 25, 2004	40	5	5	0
Nov. 1, 2004	39	3	3	0
Nov. 8, 2004	55	27	27	0
Nov. 15, 2004	45	0	0	0
Nov. 22, 2004	39	13	13	0
Nov. 29, 2004	27	17	17	0
Dec. 6, 2004	38	33	33	0
Dec. 13, 2004	23	13	13	0
Dec. 20, 2004	18	23	22	1
Jan. 3, 2005	25	2	2	0
Jan. 10, 2005	7	11	11	0
Jan. 19, 2005	11	87	86	1
Jan. 24, 2005	8	35	35	0
Feb. 3, 2005	0	28	25	3
Feb. 14, 2005	0	29	23	6
Feb. 24, 2005	0	36	30	6

Mar. 1, 2005	0	29	25	4
Mar. 14, 2005	0	32	24	8
Mar. 21, 2005	0	20	17	3
Mar. 29, 2005	0	19	14	5
Aggregate	558	558	520	38

Exhibit G

Sample Assessment and Recommendation Letter

Department of Defense
Office for the Administrative Review of the Detention
of Enemy Combatants at
U.S. Naval Base Guantanamo Bay, Cuba

Ser

[CLASSIFICATION]

From: (Presiding Officer of the Administrative Review Board)
To: Designated Civilian Official
Via: Director, OARDEC

Subj: RECORD OF PROCEEDINGS FOR THE ADMINISTRATIVE REVIEW OF THE DETENTION OF ENEMY COMBATANT (ISN#)

Ref: (a) (Implementation Order)
(b) Deputy Secretary of Defense Order OSD 06942-04 of May 11, 2004
(c) Deputy Secretary of Defense Memo of June 4, 2004

Encl: (1) U.S. Army; CITF Assessment
(2) CDR, USSOUTHCOM Assessment (includes CDR, JTF GTMO's assessment)
(3) Other Government Exhibits
(4) Record of proceedings of ARB Session with Enemy Combatant (ISN#)
(5) Enemy Combatant Election Form
(6) Information provided to the ARB by another federal agency or State or enemy combatant and not considered relevant to the proceedings (if applicable)
(7) ARB minority assessment and recommendation (if applicable)

1. Per references (a) through (c), an Administrative Review Board (ARB) was conducted in the case of [Name], [ISN #] on (date).

2. The members of the ARB for (ISN #) were:

Presiding Officer (PO) (name)
Member (name)
Member (name)
Designated Military Officer (name)
Assisting Military Officer (name)
Translator (name)

[CLASSIFICATION]

[CLASSIFICATION]

3. DoD recommendation (insert text). CDR, USSOUTHCOM assessed (ISN#) as (high/medium/low threat) due to (insert text), assessed detainee's intelligence value as (insert text), and recommended (insert text). The U.S. Army (i.e., CITF) assessed (ISN#) as (high/medium/low threat) due to (insert text). Other government agency assessments are as follows:

a. DoJ:___________
b. DoS:___________
c. DHS:___________
d. CIA:___________
e. (*Note: If an agency does not provide a response it should be noted as: "No Formal Assessment"*)

4. Based on the above, the ARB assessed (EC name/ISN) to be high/medium/low threat due to _____ *(include a concise basis for the decision to include all relevant factors considered)*.

5. In addition to, or in spite of, the threat assessment, the ARB considered the following factors to weigh in favor of the further detention of the enemy combatant (list factors, e.g., the fact that the enemy combatant is being considered for trial by Military Commission, continuing intelligence value, etc.).

6. The recommendation of the ARB is to release/ transfer (with the following suggested conditions: _______[if applicable])/continue to detain, on an x to y vote of the ARB. Enclosures (1) through (7) pertain.

(Note: If the vote is not unanimous, include paragraph 7 to provide the minority assessment and recommendation)

7. As presented in enclosure (7), the dissenting board member's recommendation is to release/ transfer (with the following conditions: _______[if applicable])/continue to detain due to_ _______.

//s//
Name
Rank, Component
Presiding Officer

[CLASSIFICATION]